RECENT DECISIONS

ALIENS—DEPORTATION—ANARCHICAL TEACHINGS.—The relator, an alien, was found teaching and advocating the principles of anarchy. A decree was approved by the Commissioner of Immigration to deport the relator for violation of the Immigration Act of February 5, 1917, which provides for the deportation of certain classes of aliens, including anarchists, irrespective of the time of their entry into the United States. The relator contended that he did not come within the purview of the statute because he was a philosophic anarchist and opposed to the use of force and violence. *Held*, the relator comes within the meaning of the statute and may be deported. *Lopez* v. *Howe* (C. C. A.), 259 Fed. 401. See NOTES, p. 201.

APPEAL AND ERROR—SUPERSEDEAS BOND—WHEN JUDGMENT "AFFIRMED"—A judgment was recovered for a certain sum of money with interest. A writ of error and supersedeas was granted to that judgment, provided the defendant should execute a penalty bond with approved security and condition according to law. This having been done, the Supreme Court of Appeals entered an order annulling the judgment and remanding the cause for a new trial with the proviso, however, that if the defendant in error should, within ninety days, enter a remittitur for the interest granted by the lower court, the judgment should stand affirmed. This remittitur was entered and the question then arose as to whether or not the judgment had been affirmed within the intent and meaning of the condition of the supersedeas bond so as to hold the sureties liable. *Held*, the judgment had been affirmed. *National Surety Co.* v. *Commonwealth* (Va.), 99 S. E. 657.

The obligation of sureties upon bonds is *strictissimi juris* and is not to be extended by implication beyond the very terms of the contract. See *Mann* v. *Mann*, 119 Va. 630, 89 S. E. 897; *Crane* v. *Buckley*, 203 U. S. 441. And the obligation of a supersedeas bond being purely a matter of statutory requirement the provision of the statute is to be read into every such bond. *Bemiss* v. *Commonwealth*, 113 Va. 489, 75 S. E. 115. Consequently the decisions as to what constitutes an affirmance within the condition of a supersedeas bond will vary according to the statutes of the different states. However, under a statute similar to that of the Virginia Code, a judgment affirming the judgment of the lower court as to the principal sum and six per cent interest, upon the plaintiff's remitting an illegal excess of interest recovered in the lower court, was held to be such an affirmance of the judgment as to bind the surety. *Orr* v. *Hopkins*, 124 U. S. 510.

A fortiori, where the condition of the bond, or the statute under which it is executed, specifically provides that the sureties shall be liable to pay the judgment of the superior court whether that judgment be an entire or partial affirmance of the judgment of the lower court, the sureties are bound in case the judgment is reversed with condition

that it shall stand affirmed if a remittitur be entered, and such remittitur is entered. *Butt* v. *Stinger*, 4 Cranch (C. C.) 252, 4 Fed. Cas. 918. But where the appellate court reversed the original judgment and ordered a new trial unless the plaintiff should elect to take a judgment for a less amount, in which case the lower court was to enter a judgment for that sum, this was held to be a total destruction of the old judgment so that the case did not come within a provision of the bond which rendered the sureties liable in case of a partial affirmance by the superior court. *Lehmann* v. *Amsterdam Coffee Co.*, 151 Wis. 207, 138 N. W. 606, Ann. Cas. 1914A, 1299. And so where the condition of the bond was to prosecute a writ of error "to effect," and there was an affirmance entered by the superior court after the filing of a remittitur in accordance with the choice given the plaintiff by order of the court, the sureties were discharged, as the writ of error had been duly prosecuted and had been so effective as to alter the original judgment. *Seymour* v. *Gregory*, 10 Biss. 13, 21 Fed. Cas. 1115.

But, irrespective of statutes, in equity, where a decree is reversed in part and affirmed in part, such reversal does not destroy the lien of so much of the decree as is affirmed or unreversed. *Shepherd's Adm'r* v. *Chapman's Adm'r*, 83 Va. 215, 2 S. E. 273. The decision in the instant case is based partially on this analogy.

BILLS AND NOTES—ACCOMMODATION INDORSEMENT—BURDEN OF PROOF.—The payee of a promissory note signed jointly by the defendant and another, brought an action against the defendant to recover the amount thereof. The defendant answered that he signed the note for the accommodation of the payee. In passing upon the question whether the defendant signed for the accommodation of the payee, the court instructed the jury that the burden of proof was upon the defendant. *Held,* the instruction was correct. *Stubbins Hotel Co.* v. *Beissbarth* (N. D.), 174 N. W. 217.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name and credit to some other person. In an action on the instrument by the accommodated party want of consideration is a valid defense. *Peterson* v. *Tillinghast,* 112 C. C. A. 545, 192 Fed. 287. See also *Knapp & Co.* v. *Tidewater Coal Co.*, 85 Conn. 147, 81 Atl. 1063; *Keenan* v. *Blue,* 240 Ill. 177, 88 N. E. 553; *Conners Bros. Co.* v. *Sullivan,* 220 Mass. 600, 108 N. E. 503. In regard to their mutual rights and liabilities, the apparent relation, on the instrument, of the accommodation indorser and the accommodated party is immaterial. *Whitwell* v. *Crehore,* 8 La. 540, 28 Am. Dec. 141.

The Negotiable Instruments Law adopted in most of the States expressly provides that every negotiable instrument is deemed to have been issued for a valuable consideration, and every person whose signature appears thereon to have become a party thereto for value. N. I. L. (Va.), § 24, Va. Code, 1904, § 2841a; *First National Bank* v. *Stallo,* 160 App. Div. 702, 145 N. Y. Supp. 747; *Utah National Bank* v. *Nelson,* 38 Utah 169, 111 Pac. 907. Nor is the recital of a valuable considera-